

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2085 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHAVASAR T MULUKCHAND

Versus

PARI VALLABHDAS PARSHOTTAM

Appearance:

MR PV NANAVATI for Petitioners

MR VC DESAI for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 22/07/98

ORAL JUDGEMENT

1. This is tenant's revision arising out the following facts :

2. The disputed shop was in the tenancy of the revisionist at Rs.21/- p.m. The shop was in dilapidated condition. The plaintiff - respondent received three notices dated 15.1.1973, 28.9.1973 and 9.8.1974 from the

concerned Nagar Panchayat to demolish the disputed shop as it was in dangerous condition. The revisionist was requested to vacate the shop so that it may be demolished. The defendant No.1 revisionist was avoiding to vacate the shop. However, on 20.11.1974 the defendant No.1 voluntarily vacated the said shop and handed over vacant possession of the said shop to the respondent. The respondent thereafter got the shop demolished on 7.12.1974. After demolition of super structure open land was lying at the site of the shop. It was alleged that without any right the defendant No.1 again along with his son defendant No.2 jointly encroached upon a portion of the open land of the said shop on 6.2.1975. The details of encroachments were given in the plaint. Suit for possession was filed against the defendants treating them to be tress-passers.

3. The Suit was resisted by the defendants on the ground that the defendant No.1 never surrendered his tenancy rights and he is still continues to be tenant. No doubt the shop was demolished by the respondent, but thereafter the defendant No.1 has raised wooden cabin thereon and is running his business. Allegation of tress-pass over the land was denied.

4. The trial Court found that on 20.11.1974 the defendant No.1 handed over vacant possession of the shop in suit to the respondent and that subsequently he tress-passed over a portion of the land on 6.2.1975 and raised wooden cabin thereon. With these findings the Suit was decreed. An Appeal was preferred which was dismissed. Hence this revision.

5. Shri P.V.Nanavati representing the revisionist contended that the Judgments and decrees of the two courts below suffer from manifest error of jurisdiction. Hence the revision deserves to be allowed. He placed reliance upon Section 28 of the Bombay Rent Act, 1947. He vehemently argued that tenancy was never surrendered by the defendant No.1 and since he had pleaded that the tenancy is still subsisting the suit could not be tried on the regular side rather it should have been tried by the rent Court. It was also pointed out that no doubt property is situated at Kheralu and no officer there is invested with the powers of a Small Causes Court, hence the Suit was tried by the Civil Judge (JD) as regular suit. He also referred to the case of Shantukumar Laxmikant V/s. Shah Kumudchand, reported in 1985 GLH 920 in support of his contention.

6. After considering the provisions of Section 28 of

the Bombay Rent Act and the case of Shantukumar (supra) I find that neither Section 28 applies to the facts of the case nor the verdict in Shantukumar's case. The facts in Shantukumar's case were that the plaintiff filed Suit for possession of suit premises in Ahmedabad City Civil Court on the basis that the defendant was tress-passer. While the defendant resisted the suit claiming to be the tenant in the suit premises on the allegation that he was entitled to claim tenancy rights by virtue of the provisions of Section 5(11)(c) of the Rent Act as he was residing with his maternal grand father at the time upto the death. The question was whether the City Civil Court will have jurisdiction to decide the question that the defendant is entitled to claim status of tenant under Section 5(11)(c) of the Rent Act and if not what will be the effect of the same on the Suit. It was held that the Ahmedabad City Civil Court had no jurisdiction to deal with or decide the question arising out of the provision of Section 5(11)(c) of the Rent Act and without deciding it no decree for possession could have been passed against the defendant. The Suit was ultimately dismissed. This case is distinguishable on facts. In the case under consideration before me there is concurrent finding of the two courts below that the tenant defendant No.1 had handed over vacant possession of the suit shop on 20.11.1974 and thereafter the shop was demolished. There is again concurrent finding of the two courts below that on 6.2.1975 the two defendants, father and son, jointly tress-passed over a portion of the land where the shop stood earlier and raised wooden cabin. It was thus a case of tress pass committed by the defendants No.1 and 2. These two findings of fact do not suffer from any manifest error of law or misappreciation or misreading of evidence.

7. The plea of jurisdiction was not raised in the trial Court nor it was raised in the Appellate Court. Mr. Nanavati, further contended that once it was pleaded that the tenancy of defendant No.1 subsisted, for all purposes it meant that the jurisdiction of the regular court was ousted. I am however not impressed with this contention. The tenancy will be deemed to have been surrendered once the tenant defendant No.1 had handed over vacant possession of the shop to the landlord respondent and the landlord respondent demolished the same. There is no averment or evidence that there was any agreement between the parties that after demolition the landlord will construct a shop which will be given to the defendant No.1. Consequently it cannot be said that the tenancy in favour of the defendant No.1 subsisted or continued. If the tenancy was surrendered by him by

handing over possession on 20.11.1974 and re-entry was made in the nature of tress-pass on 6.2.1975 the relationship of landlord and tenant ceased to exist and by mere pleading that the tenancy was subsisting jurisdiction of the trial Court or the appellate Court could not be ousted.

8. I am, therefore, of the view that there is no force in the plea that the two courts below had no jurisdiction to pass the impugned decree. No interference in this revision on the above facts and circumstances of the case is called for.

9. Mr.Nanavati, however, contended that some time may be granted to the revisionist to vacate the land in question and to remove the wooden cabin. He prays for one year's time for the purpose which was opposed by Mr.V.C.Desai, representing the respondent. However, in the facts and circumstances of the case six months' time to the revisionist to vacate the land will be sufficient time.

10. The revision is, therefore, dismissed. The Parties shall bear their own costs. The revisionist is permitted to hand over vacant possession of the land in suit within a period of six months from today on condition that he shall file usual undertaking within two weeks from today in this court.

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